



37.

SRC's and MFH's failure to respond to Plaintiff's First Interrogatories appears to be a willful attempt to obstruct the discovery process. Over four months have passed since they were served with the Interrogatories, and they have still failed to respond. To make matters worse, SRC and MFH did not even respond to the Motion to Compel. SRC and MFH are apparently content to sit and do nothing until expressly ordered by the Court to do otherwise. Because SRC and MFH have not responded to Plaintiff's Interrogatories, and they have not objected to the Interrogatories, Plaintiff's Motion to Compel is granted. SRC and MFH shall respond to Plaintiff's First Interrogatories no later than Monday, October 6, 2008. Failure to comply with this deadline will result in severe sanctions.

As to Plaintiff's request for expense shifting sanctions, Federal Rule of Civil Procedure 37 provides that if a motion to compel is granted, "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). This rule creates a rebuttable presumption in favor of sanctions. See, e.g., Devaney v. Continental Am. Ins. Co., 989 F.2d 1154,1161-62 (11th Cir. 1993); 7 MOORE'S FEDERAL PRACTICE § 37.23[1], at 37-41 (3d ed. 2007). This presumption can be overcome if the nonmoving party demonstrates that: "(i) the movant filed the motion before attempting in good faith to

obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(A).

In this case, neither SRC nor MFH have responded to the Motion to Compel, and therefore, they have not rebutted the presumption in favor of sanctions. As a result, Plaintiff is awarded \$490.00 for the costs it incurred in bringing this Motion. This amount shall be paid by the attorneys for SRC and MFH by October 10, 2008.

**SO ORDERED**, this the 2<sup>nd</sup> day of October, 2008

**s/ Hugh Lawson**  
**HUGH LAWSON, Judge**

dhc